

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO**

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Case Title: New Mexico Motor Speedway, Inc.

Case Number: 05-14845

Document Information

Description: Minutes of Final Hearing Held On 9/19/05 Re: [6-1] Application To Employ Brian E. Rowe, CPA by New Mexico Motor Speedway, Inc. .

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Submitted By: Mary Anderson

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

Clerk's Minutes

Before the Honorable James Starzynski

James Burke, Law Clerk
Jill Peterson, Courtroom Deputy

****Hearing was Digitally Recorded**

Date:
MONDAY, SEPTEMBER 19, 2005

In Re:
NEW MEXICO MOTOR SPEEDWAY
No. 11-05-14845 SA

FH on Motion to Employ Accountant by Debtor
(applic. #6, affdt #7, obj. #24 & 28)

Attorney for Debtor: Dave Giddens
Attorney for Richards Parking, Inc., et al.: William Chappel and Robert Jacobvitz
Attorney for UST: Leonard Martinez-Metzgar
Attorney for Madison, Harbour Law Firm: Gregory Steinman and Marisol Garcia

TIME STARTED: 2:18 pm

TIME ENDED: 4:18 pm

Summary of Proceedings:

Exhibits _____

Testimony _____

MOTION DENIED. Mr. Jacobvitz to do order.

Ruling:

1334 and 157; core; 7052

The application of the estate to hire Mr. Rowe is denied.

Possible 547 and 548 actions. And the corporation and Mr. Shakra sort of acknowledged that (re 547) by paying Mr. Rowe beforehand so he would not be a creditor. I am aware of the distinctions that courts make between actual and potential conflicts, but there is no bright line that I have been able to determine, and this situation looks too much like an actual conflict.

Mr. Rowe did work for Mr. Shakra et al. prepetition, and helped determine what the numbers are for the corporation that the DIP has now put in its schedules, etc. - it would be difficult for an ordinary human being to go back and seriously re-examine and challenge those numbers to the extent that the estate on the one hand and the Mr. Shakra et al. on the other hand (esp. Mr. Shakra) had a difference of opinion and the estate (or creditors of the estate) wanted that issue raised. I don't know where this leaves the average professional that has worked for a corporation (or partnership, etc.) and all its owners, directors, officers, family members, etc. when the corporation becomes a DIP, but it does not work in this case.

By this I mean no attack on Mr. Rowe's integrity at all; if anyone could pull off being completely objective and loyal to the estate, it would be Mr. Rowe, but I am not going to put him in that position.

There is also the issue of a potential claim against the estate and Mr. Rowe for interference with contractual relations. I have a question about how solid that is, in law and in fact, but it is not an empty threat with nothing offered to back it up, and so that is an additional reason to not permit the employment, although whether it would be so on its own is not something I need to decide.